

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-MD-2724
HON. CYNTHIA M. RUFE

THIS DOCUMENT RELATES TO:

THE KROGER CO., et al.,
Plaintiffs,
v.

ACTAVIS HOLDCO U.S., INC., et al.,
Defendants.

18-CV-284

**DEFENDANTS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF THE OPPOSITION TO THE KROGER DIRECT-ACTION
PLAINTIFFS' MOTION FOR LEAVE TO AMEND**

Defendants respectfully submit the attached opinion recently issued by the Court of Appeals for the Third Circuit, *Premier Comp Solutions, LLC v. UPMC*, No. 19-1838 (3rd Cir. Aug. 12, 2020), in which the Court held “that when a party moves to amend or add a party after the deadline in a district court’s scheduling order has passed, the ‘good cause’ standard of Rule 16(b)(4) of the Federal Rules of Civil Procedure applies” and “[a] party must meet this standard before a district court considers whether the party also meets Rule 15(a)’s more liberal standard.” Slip. Op., attached hereto as Exhibit A, at 5. The Court of Appeals affirmed the district court’s order denying the plaintiff’s motion to amend because the plaintiff failed to show good cause under Rule 16(b)(4). *Id.* at 6-7. The Third Circuit’s controlling opinion in *Premier* supports the arguments made by Defendants in their Opposition to the Kroger DAPs’ Motion for Leave to Amend at pages 7 to 11 (ECF No. 206), and Defendants’ Sur-Reply at pages 3 to 8 (ECF No. 217), and requires denial of the Kroger DAPs’ motion (ECF No. 196).

We understand that the Kroger DAPs are considering whether to withdraw their motion to amend, but because that has not yet occurred and the motion remains pending, we submit this

notice of supplemental authority to call to the Court's attention new, controlling authority issued by the Third Circuit.

Dated: August 20, 2020

Respectfully submitted,

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